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No. 79-1320

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

RAYMOND KASSEL, *et al.*,
Appellants,

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE,
A Delaware Corporation,
Appellee.

On Appeal from the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR APPELLANTS

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QUESTIONS PRESENTED

1. Whether, when a state justifies a statute limiting the length of vehicles which may operate on its highways by reference to an interest in safety, and that justification is challenged in a suit under the dormant Commerce Clause, the District Court should inquire only whether a rational legislature could conclude that the length of vehicles is generally related to highway safety.

2. Whether, when conflicting evidence is presented on legislative fact questions concerning the nature and extent of the relationship between the length of vehicles and highway safety, the presumption of constitutionality imposes upon the challenger a burden of persuasion by clear and convincing evidence.

3. Whether, when a District Court makes "findings of fact" adverse to the asserted justifications for a state statute challenged under the dormant Commerce Clause, the deference due state legislative judgments requires de novo review by appellate courts of those factual findings rather than application of the clearly erroneous standard of Fed.R.Civ.P. 52.

4. Whether on this record it may be concluded that Iowa is irrational in permitting double-bottom trucks only five feet of additional length beyond that permitted conventional semi-trailers.

5. Whether, in the absence of Congressional action, recent increases in vehicle lengths permitted by some neighboring states and voluntary business decisions by some trucking firms may effectively preempt Iowa's long-standing judgment concerning the length of vehicles which may operate within its borders.

6. Whether the size of vehicles permitted to operate on a state's highways is a subject requiring uniform national standards such that the dormant Commerce Clause absolutely precludes all state regulation of vehicle size.

LIST OF PARTIES

APPELLANTS

Raymond Kassel—Director of Iowa Department of Transportation

Robert Rigler—Member and Chairman of Iowa Transportation Commission

L. Stanley Schoelerman—Former member of Iowa Transportation Commission

Donald Gardner—Member of Iowa Transportation Commission

Jules Busker—Member of Iowa Transportation Commission

Allan Thoms—Member of Iowa Transportation Commission

Barbara Dunn—Member of Iowa Transportation Commission

William McGrath—Member of Iowa Transportation Commission

Jon McCoy—Former Director of Motor Vehicles Department of Public Safety

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APPELLEES

Consolidated Freightways Corporation of Delaware Operating as a Common Carrier

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BRIEF FOR APPELLANTS

OPINIONS BELOW

The opinion of the court of appeals (Jurisdictional Statement App., pp. 1a-14a) is reported at 612 F.2d 1064 (8th Cir. 1979). The opinion of the district court (Jurisdictional Statement App., pp. 15a-36a) is reported at 475 F.Supp. 544 (S.D. Iowa 1979).

JURISDICTION

The judgment of the court of appeals was entered on December 7, 1979. Notice of Appeal was filed January 4, 1980, and a supplementary Notice of Appeal was filed February 5, 1980 (Jurisdictional Statement, pp. 37a-38a). Probable jurisdiction was noted on May 19, 1980 (A. 3). The jurisdiction of this Court rests upon 28 U.S.C. § 1254(2).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Article I, Section 8, United States Constitution:

> The Congress shall have power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes . . . .

Section 321.457(6), Iowa Code (1979):

> 6. No combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet.

Section 321.457 is set forth in its entirety as an Appendix to this Brief.

STATEMENT

This is an appeal from a decision by the United States Court of Appeals for the Eighth Circuit affirming an order by the District Court finding unconstitutional an Iowa statute limiting double-bottom trucks to 60-feet in length and requiring the State of Iowa to allow 65-foot, double-bottom trucks on its interstate highways and access roads within five miles of an interstate.

The plaintiff below, Consolidated Freightways Corporation (hereinafter "CF"), is a regular route common carrier of general commodities operating in forty-eight states under a Certificate of Public Necessity issued by the Interstate Commerce Commission. Defendants below are individual officers of the State of Iowa (hereinafter "Iowa"), responsible in varying degrees for the enforcement of Iowa's motor vehicle laws. Motor Club of Iowa, a not-for-profit group organized to advance the interests of the motoring public, intervened below in defense of the Iowa statute, but has not appealed from the order of the District Court.

The statute challenged by CF represents the Iowa legislature's longstanding judgment concerning the permissible

length of trucks of various configurations. Iowa restricts most truck-tractor, semi-trailer combinations to 55 feet.[1] It is only combinations of three or more vehicles (double-bottoms) and semi-trailers hauling livestock, mobile homes, or transporting other highway or farm vehicles and implements, which are permitted a maximum length of sixty feet. Section 321.457, Iowa Code (1979). Equipment carried on vehicle or implement carriers is permitted to extend three feet beyond the front or rear bumpers, provided the overall length of the load does not exceed 65 feet, § 321.457(5). None of the defendants has discretion to permit exceptions to these limitations for divisible loads.[2]

CF contends that the 65-foot double-bottom trailers (hereinafter "doubles") it prefers to operate are as safe or safer than 55-foot semi-trailers (hereinafter "semis") and 60-foot doubles, at least on interstate highways, and that interstate commerce is burdened by their inability to operate the same 65-foot doubles through Iowa which are permitted in surrounding states. Iowa defends its generally applicable statutory length limitations by reference to its interests in maximizing highway safety and minimizing the cost of highway maintenance.

The proceedings below developed an extensive record consisting of some 52 evidentiary depositions, 14 days (2,000 pages) of trial testimony and several hundred exhibits. In support of its claim that 65-foot doubles are as safe as semis, CF offered several statistical studies and the opinions of expert witnesses and officials from

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[1] Effective May 24, 1980, combinations of vehicles (including semi-trailers and double-bottom trailers) are permitted a maximum length of 60 feet. 1980 Iowa Legis. Serv. 80-87 (West).

[2] Chapter 321E, Iowa Code (1979) provides for single-trip or annual permits for indivisible loads and certain other exemptions not discussed by the courts below.

states in which large doubles are legal. In addition to the testimony offered in *Raymond Motor Trans., Inc.* v. *Rice*, 434 U.S. 429 (1978) (hereinafter "*Raymond*"), CF produced a "matched-pair" study which attempted to compare the accident records of its own 55-foot semis and 65-foot doubles under similar conditions. (A. 283-286). Neither the studies nor expert witnesses focused primarily on direct comparisons of 60-foot and 65-foot doubles. (A. 314). CF also offered: a 1975 report to the Iowa legislature by the Iowa Department of Transportation surveying issues relating to increasing the length limitation of doubles to 65 feet, consisting of a survey of opinions of officials from other states and an analysis of the then-existing data and professional literature (A. 580-601); various engineering studies relating to such vehicle characteristics as braking, stability, splash and spray, jacknifing and emergency maneuvers (A. 93-153); and a level of service analysis for Interstate 80 and an alternative route through northern Missouri. (A. 387-396, 406-413, 632-635). CF attempted to quantify its claim that Iowa's length limitation burdens interstate commerce by a presentation based on internal data estimating the added miles traveled by both its 55-foot semis and 65-foot doubles because: 1) CF routes its transcontinental traffic on Highway 36 through northern Missouri rather than on I-80 through Iowa, 2) CF uses Iowa doubles (60-foot) or shuttles a single trailer for Iowa terminal traffic, and 3) CF uses semis or routes doubles around Iowa on its north-south traffic. (A. 382).

Iowa offered additional studies (A. 207-210, 215-225) and data from CF's own records (A. 649, 668-675) bearing on the comparative safety of semis and 65-foot doubles. This evidence raised questions about whether long doubles had higher fatality rates and more frequent accidents in which significant property damage occurred. Iowa's expert statistician explained the methodological flaws in the studies offered by both parties. (A. 469-499). Iowa's evidence did show that doubles are more

prone than semis to jackknife and upset. (Jurisdictional Statement, hereinafter "JS," at 21a).

On the question of the relationship between length and safety generally, Iowa offered an expert engineer who submitted mathematical tables relating the time and distance required to pass different length vehicles at different speeds. (A. 503-505). An expert traffic engineer tabulated the increased exposure of longer vehicles during intersection maneuvers. (A. 451-468, 655-662). The Chief of the Iowa Highway Patrol testified that longer vehicles may create safety hazards at the scene of an accident. (A. 399-400). This record also reflects that all states regulate the length of vehicles which may operate on their highways (A. 465) and that the Federal Highway Administration is in the midst of Project No. 1-U, a massive effort to determine various safety aspects of increased vehicle size and weight and their effect on other highway users. (A. 202-203).

Iowa also vigorously disputed CF's effort to establish a burden on interstate commerce. Iowa's expert economist challenged the use of CF's costs to quantify the alleged burden and established, even using CF's figures, that the effect, if any, on shipping rates was less than ⅓ of one percent. (A. 453). Iowa argued that it was unfair to attribute the diversion of traffic around Iowa to its long-standing length limitation rather than to CF's voluntary business decisions and the more recent legislative decisions of surrounding states.

Nonetheless, the District Court found that Iowa's 60-foot limitation "caused" CF's diversion of its equipment around Iowa and into states in which it could be lawfully operated. Although it recognized the effort made by Iowa to reinforce the "strong presumption of the validity" of the statutory limitation as a safety measure (JS at 20a), the District Court found as an adjudicative fact that "there is no valid safety reason for barring doubles from Iowa's highways *because of their configuration.*" (Em-

phasis added). The District Court further stated that "[t]he evidence convincingly, if not overwhelmingly, establishes that the 65-foot twin is as safe as, if not safer than, the 60-foot twin and the 55-foot semi." (JS at 21a). In balancing Iowa's interests in length limitations against the burdens on interstate commerce, the District Court stressed the proposition that *interstate* highways are not a local concern. At the same time, the District Court explicitly rejected CF's claim that Iowa's length limitations discriminated against interstate commerce. The court found the regulations neutral on their face and that CF had not proven any discriminatory enforcement. All but one of the statutory exceptions were found to be consistent with the state's concern for safety. (JS at 29a-30a). Finally, the District Court called for action by Congress:

> The trucking industry has long played leapfrog with weight and length limitations to achieve alternate increases. Truckers that haul products that "cube out" before they "weigh out" ask for an increase in length of a few feet so they can take advantage of the weight limit. Then those truckers that haul products that "weigh out" before they "cube out" ask for weight increases so they can utilize the additional length. It is not difficult to establish that the small increase in weight or length creates no additional safety hazard or damage to highways. With some officials saying 108 foot triple-bottoms impose no additional safety hazard on interstates, there appears to be no end in sight.
>
> If this concern points to anything of particular significance, it is that the interstates should be treated differently than other highways. Regulations regarding the length, width and weight of vehicles using the interstate system should be uniform. Congress should pre-empt this area of the law and set these standards.

(JS at 27a-28a).

The Eighth Circuit affirmed, holding that the dormant Commerce Clause required Iowa to permit CF to operate doubles 10 feet longer than the limit for semis; the five additional feet already permitted by Iowa is constitutionally insufficient. Reading *Raymond Motor Trans. Inc.* v. *Rice*, 434 U.S. 429 (1978), to require a Federal District Court to determine whether safety justifications are substantive as a matter of adjudicative fact (JS at 7a), the Court of Appeals concluded that the District Court's Findings of Fact rejecting Iowa's interest in safety were not "clearly erroneous." *Id.* However, in contrast to the Findings and Conclusions of the District Court, the Court of Appeals held that the cumulative effect of several "exemptions" from Iowa's length limitations constituted a "factor weakening the presumption in favor of a safety regulation." (JS at 10a). Moreover, the "exceptions" were said to reduce the court's "willingness to assume that the State's own political process serves as a check on burdensome regulations." (JS at 11a). Judge Henley, writing *dubitante*, noted that the Court of Appeals' reading of *Raymond* was difficult to reconcile wih the rule of *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R.I. & P.R. Co.*, 393 U.S. 129, 138-39 (1968), that "the District Court's responsibility for making 'findings of fact' certainly does not authorize it to resolve conflicts in the evidence against the legislature's conclusion or even to reject the legislative judgment on the basis that . . . the legislative viewpoint constitutes nothing more than . . . pure speculation." (JS at 12a).

SUMMARY OF ARGUMENT

I. Iowa's nondiscriminatory statute limiting the length of doubles to 60 feet was held to impermissibly burden interstate commerce primarily because the courts below rejected the claim that the statute advances a local interest in safety. Iowa's safety claim was rejected because the courts below addressed the question of whether a 65-

foot double is as safe as a 60-foot double or a 55-foot semi, rather than the proper question of whether the length of vehicles is generally related to their safety. This is the proper question because 1) 65-foot doubles are not permitted in Iowa because of their *length*; Iowa permits the double *configuration*, and 2) the nature of a state's interest cannot be fairly and accurately assessed if a court focusses on marginal differences between the permitted and prohibited rather than on the correlation of variables.

The courts below also misperceived the nature of the issue by treating the relationship between length and safety a question of adjudicative fact rather than legislative fact. As a result, the courts below failed to ask whether CF had demonstrated by clear and convincing evidence that the legislature lacked a rational basis for concluding that the length of vehicles is related to their safety. Put differently, the Iowa statute was not afforded the standard of review required by the presumption of constitutionality.

The Court of Appeals erroneously concluded that the presumption of constitutionality to which Iowa was otherwise entitled was weakened by several "exceptions" to the length limitation. However, because CF did not prove a discriminatory purpose, the Court of Appeals engaged in an impermissible psychoanalytic inquiry into the "motives" of the Iowa legislature. Here, unlike in *Raymond*, the exceptions do not permit the inference that those interested in carrier efficiency are unrepresented in the Iowa legislature.

CF offered little evidence bearing directly on the question of the relationship between length and safety. Although the evidence does not reveal the precise nature and magnitude of the relationship, it does reveal an overwhelming consensus among legislatures and highway administrators that all facets of vehicle size, including length, should be limited. Evidence relating to such

specific length-related problems as visibility, lane intrusion and removal at the scene of an accident, was also introduced. CF did not establish that the safety of vehicles is unrelated to length.

II. If length is related to safety, establishing a particular limit is essentially a matter of line-drawing. Iowa's 60-foot limit is within the general range employed in other jurisdictions and CF has not shown that ten additional feet beyond the length permitted semis is constitutionally required. Permitting a challenger to isolate marginal differences in length would permit the trucking industry to eliminate all length limitations, one small step at a time.

III. A burden claim based on diversion of equipment around Iowa is a bootstrap grounded in CF's voluntary decisions and the recent legislative decisions of other states and it is unfair and inaccurate to characterize the length limitation as the *cause* of the burden. The only arguable burden fairly attributable to Iowa is any demonstrable difference in efficiency between 65-foot and 60-foot doubles. CF has not shown that to be significant. Even were it appropriate to attribute CF's claimed burden to Iowa's length limitation, expert testimony demonstrates that the impact on shipping rates, if any, is insignificant according to the standards employed in *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

IV. Once it is established that Iowa's nondiscriminatory length limitation reflects an interest in safety, the outcome of the Commerce Clause balancing process is no longer in doubt. Prior decisions of this court reveal strong deference to state highway regulations. Congressional acquiescence in a long line of decisions treating highway safety regulations as matters of local concern, as well as direct evidence, indicates that Congress agrees that uniformity is not required. This Court has not overridden legislative judgments that an incremental increase in safety outweighs minor economic costs to interstate business.

ARGUMENT

Challenges to state safety regulations under the dormant Commerce Clause frequently present analytic difficulty. Nonetheless, certain general principles of adjudication have emerged which provide a framework within which a detailed argument may be presented. Congress possesses exclusive authority to regulate interstate commerce, qua interstate commerce, and the states may not erect barriers to the free flow of interstate commerce. However, in the absence of congressional regulation, states may adopt nondiscriminatory regulations of local activities within their borders to promote the health, safety and welfare of its citizens, even if such regulations have an incidental impact on interstate commerce. *Raymond*, 434 U.S. at 440. To insure that states do not engage in economic protectionism under the guise of police power regulation, federal courts will not conclusively presume that the stated purpose of state regulation is necessarily its real motive. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333, 352 (1977). Once it is determined as a threshold matter that the purpose and effect of the state regulation relate to legitimate state interests, it may still be necessary for a federal court to balance competing interests to determine whether "the burden imposed on such commerce is clearly excessive in relation to putative local benefits." *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). However, where a court is satisfied that a regulation advances a state interest in highway safety, great deference will be afforded legislative judgments concerning the relative importance of safety benefits in comparison with incidental economic costs. *Raymond*, 434 US. at 443-44, 449-50; *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520, 524 (1959); *South Carolina Highway Dept.* v. *Barnwell Bros. Inc.*, 303 U.S. 177, 190-91 (1938); *Sproles* v. *Binford*, 286 U.S. 374, 388-89 (1932). See also *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, R.I. & P.R.Co.*, 393 U.S. 129, 139-40 (1968) (hereinafter "*Firemen*").

Guided by these accepted principles, the courts below should have addressed three principal questions in resolving the issues tendered to them: 1) Can Iowa's vehicle length limitations § 321.457, Iowa Code (1979), taken as a whole, fairly be characterized as a highway safety measure? 2) Is it constitutionally reasonable to limit double-bottom trailer combinations to 60 feet? 3) Assuming that § 321.457 is a reasonable safety measure, does it impose burdens on interstate commerce that clearly outweigh the safety benefits?

In Point I of this brief, Iowa will demonstrate that this is the proper framework within which to evaluate the evidence and that, had the courts below properly analyzed the record, Iowa's length limitation would have been characterized as a highway safety measure. In Point II we will show that CF has not proven Iowa unreasonable in drawing the line for vehicle length at 60 feet. In Point III CF's claimed burden on interstate commerce will be critically evaluated. Finally, it will be shown in Point IV that when Iowa's safety interest is factored into the Commerce Clause balancing process, this reasonable length limitation is easily sustained.

I. IOWA'S LIMITATIONS ON TRUCK LENGTH ARE SAFETY REGULATIONS FOR PURPOSES OF BALANCING LOCAL INTERESTS AGAINST CLAIMED BURDENS ON INTERSTATE COMMERCE.

Iowa asserts in this litigation that highway safety is an important interest served by § 321.457. CF challenges this assertion by claiming as a matter of adjudicative fact that a 65-foot double is as safe as other vehicles which Iowa permits to operate on its highways and by implicitly arguing that a state may not legislate by general classification. CF's contentions have resulted in serious confusion of the issues in the courts below. When that confusion is dispelled, Iowa's interest in safety may no longer be disregarded.

A. Iowa's Vehicle Length Limitations Are Safety Regulations If, As a Matter of Legislative Fact, Length is Generally Related to Safety.

First, it is important to stress that § 321.457 is a generally applicable limitation upon the *length* of various classes of trucks. CF contends, however, that the 65-foot doubles it prefers to operate are not permitted on Iowa highways because of their *configuration*, despite the fact that the semi-trailer configuration, the principal alternative for general commodity carriage, has been allowed less length on Iowa's highways. Plainly, however, § 321.457 limits no truck because of its configuration. Rather, the statute establishes different length limits for different classes of vehicles. Only one of the variables considered is configuration. The Iowa limit for the doubles configuration is 60 feet; the Iowa limit for the semi-trailer configuration has been 55 feet.[3] Iowa does not discriminate against the doubles configuration. Thus, for purposes of determining whether § 321.457 advances an interest in safety, the important question is whether the *length* of trucks is generally related to their safety.

In determining the *nature* or *character* of the local interest, a federal court should focus upon the *general* relationship between length and safety, and not, as occurred below, upon the comparative safety characteristics of two particular types of vehicles of marginally different lengths. By way of illustration, consider a limitation on the companion dimension of truck width, which it may be assumed all concede is related to highway safety. Suppose a state width limitation of eight feet is challenged under the Commerce Clause by a party who wishes to operate a vehicle eight feet, three inches wide. A federal court would not, prior to characterizing the width regulation as a safety regulation, pause to con-

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[3] As noted *supra* at 3, the Iowa legislature recently increased the limit for semis to 60 feet.

sider whether three additional inches would seriously increase the danger. Similarly, if a 50 miles per hour speed limit were challenged by a party who claimed an economic need to proceed at 54, a court would not, before treating the speed limit as a safety measure, inquire whether four miles per hour is demonstrably critical in preventing accidents. Thus, although the particulars of the statute may be challenged as irrational, for purposes of the threshold question of whether the statute should be characterized as a safety regulation, a federal court should inquire only whether the length of vehicles is generally related to safety.

Although this methodological issue has not been discussed overtly in the decisions of this Court, the practice has been precisely that for which Iowa contends. For example, in *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 186 (concurring opinion), the question addressed was the general relationship between oil tanker size and state concerns for safety and the environment. In *Firemen*, this Court plainly focussed upon whether imposing a minimum crew size advanced railway safety and not upon whether four crewmen could operate a train as safely as five. 393 U.S. at 130, 133-136. In *Southern Pacific Co.* v. *Arizona*, 321 U.S. 761, 775-76 (1945), the lack of a general relationship between train length and safety was fatal to the Arizona statute. The problem was not that the limit imposed was five cars too short. And, in *South Carolina State Highway Dep't.* v. *Barnwell Bros., Inc.*, 303 U.S. 177, 190-91 (1938), this Court addressed the general relationships between vehicle width and safety and between vehicle weight and safety. Justice Stone specifically disavowed a judicial role in evaluating the comparative utility of marginally different restrictions.

The courts below not only posed the issue too narrowly, but they also misperceived the nature of the inquiry. The question of whether the length of vehicles is related

to their safety is a question of fact, but it is a question of legislative fact rather than adjudicative fact:

> Adjudicative facts usually answer the question of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are the general facts which help the tribunal decide questions of law and policy and discretion.

K. Davis, *Administrative Law Text*, § 7.03, at 160 (3d ed. 1972).

This distinction is important to the nature of the inquiry here. Legislative facts are generally important in resolving constitutional issues and are often critical in dormant Commerce Clause litigation. *Raymond* at 447-48, n.25. See also Bikle, *Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action*, 38 Harv.L.Rev. 6, 9-10 (1924); Karst, *Legislative Facts in Constitutional Litigation*, 1960 Sup. Ct. Rev. 75, 78.

Legislative facts may be supplied by judicial notice, by evidence in the record or by factual material supplied in a legal brief (the "Brandeis Brief"). Karst, *supra* at 99-100. Scrutiny of legislative facts is essential in determining whether a statute is rationally related to a legitimate governmental objective. Alfange, *The Relevance of Legislative Facts in Constitutional Law*, 114 U.Pa.L.Rev. 637, 668 (1966). That inquiry is usually framed in terms of whether a rational legislature could believe that x is related to y. That is the basic question here. Iowa's interest in the length limitation should be characterized as a safety interest for Commerce Clause balancing purposes if a rational legislature could believe that the safety of vehicles is affected by their length.

B. The Presumption of Constitutionality Provides the Standard of Review for Determination of Disputed Questions of Legislative Fact.

The courts below, in part because they failed to distinguish between adjudicative and legislative facts and in part because they misread *Raymond*, failed to provide Iowa with the proper benefit from the presumption of constitutionality. Legislative facts are frequently complex, built upon an intricate structure of data and inferences. Karst, *supra* at 100. General relationships among variables lies within the realm of prediction and probability. *Id.* at 99. Courts frequently will find themselves with less than perfect information concerning a critical proposition of legislative fact. Because the question ordinarily must be resolved, a court must either proceed by judicial notice or by allocating the risk of nonpersuasion (burden of proof).

This Court in *Raymond* made clear that it would no longer proceed, in the face of some record evidence, to utilize judicial notice to resolve legislative fact questions concerning vehicle size regulation. 434 U.S. at 444-45, n.19. Put differently, this Court will no longer use the presumption of constitutionality as a total substitute for legislative facts in support of a proposition when substantial evidence has been produced challenging the proposition. However, this Court made clear that a strong presumption of constitutionality continues to attach to size restrictions. *Id.* The effect of the presumption of constitutionality in this context is to place a heavy burden of persuasion on the party contending that length is unrelated to safety:

> It is hardly necessary to recall the rule that legislation comes to the Court with the presumption in favor of its constitutional validity. Clearly, therefore, the litigant who challenges this validity may properly be required to satisfy the Court of the correctness of his position in point of fact. This, it

> is submitted, he should do in such a way as to furnish a foundation *of record* for the Court's determination if it is to be in his favor.

Bikle, *supra* at 21. (Footnote omitted, emphasis added).

A "clear and convincing evidence" standard should be used to evaluate the evidence offered by the party challenging this statute:

> If the presumption of constitutionality is applied to the facts presented at trial supporting constitutionality, the litigant asserting the contrary must carry the burden of rebutting that presumption. In rebutting, this party should at least be required to meet a preponderance of the evidence standard. However, when the state asserts safety or an equally vital interest, opposing litigants should be held to a 'clear and convincing evidence' standard in rebutting the presumption of constitutionality.

Comment, *The Role of Constitutional Facts in Commerce Clause Litigation*, 65 IowaL.Rev. 1053, 1070 (1980) (footnotes omitted).

Justice Stone's statement in *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U.S. 177, 191 (1938), eloquently expresses that view:

> Since the adoption of one weight or width regulation, rather than another, is a legislative and not a judicial choice, its constitutionality is not to be determined by weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard . . . . Being a legislative judgment, *it is presumed to be supported by facts known to the legislature unless facts judicially known or provided preclude that possibility.* Hence, in reviewing the present determination *we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say*

that the legislative choice is without rational basis. (Emphasis added).[4]

Raymond clearly continues this view with the statement that a safety justification need only be "colorable," 434 U.S. at 444, or "not illusory." 434 U.S. at 449 (concurring opinion).

Weighty policy reasons support the employment of a strong presumption of constitutionality in assessing the nature or character of a state's interest in a regulation. Separation of powers principles suggest a primary role for the elected branch of government in the complex cost-benefit assessments involved in modern transportation regulation. Principles of federalism have traditionally supported a primary role for state policymaking on health and safety matters, absent Congressional preemption. In addition to allocating the burden of persuasion based on policy considerations, courts also allocate the burden based upon judicial estimates of probabilities. *McCormick on Evidence*, § 337 at 786-87 (2d ed. 1972). Experience indicates that if a legislature retains a regulation for many years and provides public funds to enforce it, seldom will it subsequently appear that the regulation lacked a rational basis.

Because of a misreading of *Raymond*, the courts below not only asked the wrong question but also failed to give Iowa the benefit of a presumption of constitutionality. In *Raymond*, Wisconsin urged that their regulation should prevail if, without more, it bore a rational relation to highway safety. This Court rejected that claim, properly

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[4] This passage also makes clear that the Court of Appeals should not have applied the clearly erroneous standard of appellate review that Rule 52, Fed.R.Civ.P., ordinarily dictates for adjudicative facts. Applying the presumption of constitutionality, the appellate court should examine the entire record to determine whether the challenger has demonstrated that the state has no colorable rational basis for the claim that a regulation advances safety.

holding that even were a rational relationship shown, it would still be necessary for a federal court to address a further question, namely whether the burden on commerce clearly outweighs putative safety benefits. The latter question plainly compels a balancing of competing interests.

The courts below mistook this rejection of Wisconsin's ultimate claim as an invitation to federal courts to sit as highway safety examiners and to make de novo determinations, by a mere preponderance of the evidence and reviewed only under the clearly erroneous standard, of the preliminary legislative fact question of whether a highway regulation advances safety. But *Raymond* neither rejected the presumption of constitutionality nor the teaching of *Firemen* that, in the guise of finding facts, a federal court should not resolve conflicting evidence in an area of scientific uncertainty to reject a reasonable policy judgment by a legislative body.

In an era of rapidly advancing technology, and related threats to public safety, government frequently must decide whether to regulate before scientists have demonstrated to a professional certainty that, say, a new chemical is or is not safe in certain applications. If the approach of the courts below were applied to the many objects in and instrumentalities of interstate commerce, numerous regulations enacted for reasons of safety, but whose precise relationship to safety cannot be scientifically demonstrated, would be placed in constitutional jeopardy.

C. Absent a Showing of Discriminating Purpose or Effect, The Selection of Different Length Limitations for Different Classes of Vehicles Does Not Weaken the Presumption of Constitutionality.

In *Raymond*, this Court placed some weight on the great number of statutory and administrative exceptions to Wisconsin's permit requirement for combinations of more than two vehicles and its length limitation of 55

feet. Their sheer number was felt to undercut the claim the "the general limitation" was designed to promote safety. 434 U.S. at 445. Moreover, this Court found that one of the exceptions discriminated on its face in favor of Wisconsin industries, *id.* at 446, and that a number of other exceptions were "enacted at the instance of, and, primarily benefit, important Wisconsin industries." *Id.* at 447. Such exceptions "weaken the presumption in favor of the validity of the general limit, because they undermine the assumption that the State's own political processes will act as a check on local regulations that unduly burden interstate commerce." *Id.* A cross-reference was made to footnote 18, explaining the special deference traditionally afforded state highway regulations in part by reference to Justice Stone's theory that, so long as state regulations affect local and interstate interests alike, the political processes may be and should be relied upon to check excessively burdensome regulations. *Id.* at 444.

Comparable objections cannot fairly be made to the Iowa length limitations. The record does not suggest that the exceptions swallow the rule or that they reflect "economic protectionism." Cf. *Lewis* v. *BT Investment Managers, Inc.*, —— U.S. —— (filed June 9, 1980), 48 U.S.L.W. 4638. Indeed, it might foster clarity not to speak of "exceptions." Iowa limits the length of all vehicles for reasons of safety. The particular length permitted varies with such factors as the number of axles, the configuration of the vehicle, the expected frequency of the vehicle's operation, the geographic location of the vehicle's operation, the practices of other states and the physical characteristics of the load. Like many regulatory decisions, these length limitations appear to reflect a complex legislative balancing of numerous variables.

The most pertinent limitations are as follows:

1. Single trucks and busses: 40 feet. §§ 321.457(1) and (2).
2. Truck tractor, semitrailer combinations: 55 feet. § 321.457(3).
3. Mobil homes drawn by motor vehicles: 60 feet. § 321.457(4).
4. Vehicle carriers: 60 feet plus five feet total overhang beyond the bumpers. § 321.457(5).
5. Combinations of three vehicles (doubles): 60 feet. § 321.457(6).
6. Semitrailers transporting livestock: 60 feet. § 321.457(3).
7. Vehicles operating in "border cities" which have adopted ordinances borrowing size limitations of abutting state. Indeterminate. § 321.457(7).

Nothing about this pattern of limitation appears to favor local trucking interests over interstate interests or otherwise overtly to discriminate against interstate interests. The District Court expressly so found (JS at 31a), although Judge Stuart did opine that the vehicle carrier limit weakens the claim that length of vehicles is related to safety (JS at 30a).

The Eighth Circuit, without reference to the District Court's express finding that the limitations were nondiscriminatory, without reference to the record, and without any significant analysis, found that the "cumulative effect" of exceptions from the general limitation represent a compromise between forces within the state that seek to retain the general limit and industries which object to the limit and concluded "they reduce our willingness to assume that the state's own political process serves as a check on burdensome regulations." (JS at 11a).

The Court of Appeals first referred to the provision for border cities and asserted: "(t)his exception, *of course*, works to mitigate the local hardships imposed by

the general prohibition." *Id.* (Emphasis added). There is no evidence in the record that the 60-foot limitation creates a *hardship* to Iowa consumers or manufacturers in border cities or elsewhere, or that the municipal lobby was in some manner persuaded to withdraw its support for 65-foot doubles by the enactment of the border city proviison. If a court is to proceed here by intuition, it is equally plausible to infer the benign motive of accommodating interstate shippers in overlength vehicles. An interstate shipper with a border city destination can avoid reloading without generating the safety concerns associated with the general use of longer vehicles on Iowa's highways.

In *Sproles* v. *Binford,* this Court upheld an exception to a weight limitation for "implements of husbandry," stating:

> We think that the exception, in light of the context and of its apparent purpose, instead of being arbitrary relieves the limitation of an application which otherwise might itself be considered to be unreasonable with respect to the exceptional movements described.

286 U.S. 374, 392.

The Iowa legislature, whose role generally requires it to make classifications, decided to treat different situations differently. The District Court found the border city provision to be rational and nondiscriminatory. (JS at 29a). It remains unclear how this legislative classification helps to justify a highly unusual judicial decision to create an additional "exception" to Iowa's general length limitation, *to wit*: the "65-foot doubles on the interstate" exception.

Next, the Court of Appeals referred to the limitation for vehicle carriers and stated that it "eases the burden of the general limitation on Iowa consumers and its agricultural community. . . ." This statement is difficult

to interpret. Apparently, the court is not suggesting that the vehicle carrier limitation was intended to subsidize unspecified manufacturers of vehicles or that there is a local trucking industry specializing in this market. Nor does it seem likely the court is suggesting that Iowa consumers would be *unable* to purchase these various vehicles without the exception. Perhaps the suggestion is that this exception lowers the cost of the vehicles. However, the record provides no support for that suggestion, much less any basis for determining the amount of any cost increase. If a court is to proceed by intuition, it is equally reasonable to suppose that the legislature was adjusting for the *comparative indivisibility* of the cargo carried by vehicle carriers and that the differing treatment is grounded in physical rather than economic reasons. See A. 198; cf. *Raymond*, n.5 at 433-34.

Third, the Court of Appeals commented upon the provision permitting livestock to be transported in 60-foot semis: "this exception is of undoubted assistance to Iowa's agricultural interests." (JS at 11a). Perhaps so. But livestock trucks are not permitted to operate longer than the general limit of 60 feet, which is also applicable to doubles. Again, it is not obvious how the existence of this classification reduces the possibility that the general limit will be increased to 65 feet.

In short, there is nothing in these "exceptions" to warrant the inference that interstate trucking interests are not fairly represented in the Iowa legislature by virtue of their common ground with shippers, intrastate trucking interests, and interstate trucking interests based in Iowa. If one is to adopt a cynical explanation for the "exceptions," a suggestion more realistic than that of the Court of Appeals is that the exceptions are the "thin edge of the wedge" in the trucking industry's campaign for larger vehicles.

A recent commentator on the dormant Commerce Clause is sympathetic to the general proposition that this Court

should apply a more stringent standard of review if it appears a challenged provision disadvantages interests unlikely to be fairly represented in the political process. Tushnet, *Rethinking the Dormant Commerce Clause*, 1979 Wis.L.Rev. 125. However, Prof. Tushnet argues that exemptions from length limitations are relevant to commerce clause issues only if they are discriminatory. *Id.* at 158. And, he suggests that if a court purports to consider alleged distortions affecting interests other than the directly regulated industry (in this case, trucking), it will soon uncover an inquiry so elusive as to be quite indeterminate. *Id.* at 160.

His suggestion seems borne out by analysis of the Court of Appeals treatment of the "exceptions" outlined above. CF has not shown that some local economic interest is skillfully precluding the formation of a majority for increasing length limitations. To the extent the record is helpful on this point, it indicates that a majority for longer trucks has been mustered in the Iowa legislature on two separate occasions (A. 420) and that, at least at one time, a majority of Iowans favored the increase. (Plaintiff's Exhibit #2, *Sixty Five Foot Twin Trailers on Iowa Highways* at 70). The record also tends to suggest that the principal opponents of increasing length have been the Motor Club of Iowa (AAA) (A. 500), the Des Moines Register and Iowa's five-term Governor, Robert D. Ray (A. 171-185). In no case is this opposition traceable to an economic special interest. In *Raymond*, there was some evidence that the political process was not working well in relation to double-bottom trucks. Here, CF has shown no more than that, to this point, it has lost a fair political fight.

This Court in *Raymond* reaffirmed the proposition that nondiscriminatory exceptions do not make a size limitation suspect:

> Neither do we intimate that nondiscriminatory exceptions to general length, width or weight limits are

> inherently suspect. Cf. *Sproles* v. *Binford*, 286 U.S. 374, 391-396 (1932).

434 U.S. at 446-47, n.24.

The District Court found that the "exceptions" were not discriminatory. The Court of Appeals, despite applying the "clearly erroneous" standard to the District Court's other findings, apparently found the exceptions at least somewhat discriminatory. But the Court of Appeals pointed to none of the evidence usually required for a finding of purposeful discrimination:

> Three sources may be used to establish such a conclusion: (1) the different practical or statistical impact upon differing classifications of persons; (2) the general history concerning the problems which the legislative or administrative rule seeks to solve; (3) the history of the passage or enactment of the legislation or agency rule.

J. Nowak, R. Rotunda & J. Young, *Constitutional Law* at 531 (West 1978), citing to *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252-266-68 (1977).

In the absence of evidence of discriminatory purpose, the Court of Appeals embarked upon a psychoanalytic inquiry into legislative "motive," the undesirability of which has long been recognized. See A. Bickel, *The Least Dangerous Branch*, 208-221 (1962).

Speculation that legislative motives are improper is undesirable because it is tantamount to an accusation that the decision maker violated the oath of office; it attacks the decision maker's honesty and integrity. See Brest, *Palmer* v. *Thompson: An Approach to the Problem of Unconstitutional Legislative Motive*, 1971 Sup.Ct.Rev. 95, 129-30. In short, unsupported accusations of improper legislative motive flout some of the very values the presumption of constitutionality exists to promote. Iowa does not contend that evidence of discrimination may

not appropriately be considered in this context; Iowa does contend that CF has not shown that Iowa need apologize for the working of its political process. There should be no weakening of the presumption here.

D. CF Did Not Establish By Clear and Convincing Evidence That Length Is Unrelated to Safety.

CF has not accepted, and indeed was not required by the courts below to accept, the burden of establishing by clear and convincing evidence that length is unrelated to safety. CF introduced virtually no evidence directly tending to establish that it is irrational to limit the length of trucks. CF's showing on this issue would not rebut the presumption of constitutionality sufficiently to require evidence from the state in support of the presumed fact. Nonetheless, Iowa did produce evidence supporting the relationship between lentgh and safety.

The record reflects that *every* state limits the length of vehicles and, indeed, that the vast majority of states set the limits for combinations of vehicles within the narrow range from 55 to 65 feet. The record also reflects that the American Association of State Highway and Transportation Officials (AASHTO) has long recommended *length* limitations, along with other size and weight limitations, for all classes of large vehicles. (A. 645.).

This Court has long relied upon the collective judgment of other public officials in determining whether a state legislature may rationally believe one variable is related to another. For example, in determining that wage rates were related to the health of women, this Court stated in *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379, 399 (1937):

> The legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection. *The adoption of similar requirements by many States*

> *evidences a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it.* Legislative response to that conviction cannot be regarded as arbitrary or capricious and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment. (Emphasis added.)

Iowa also produced evidence of particular correlations between length and safety. Professor Leo Peters of Iowa State University made calculations concerning increased passing time and distance required to pass different length vehicles traveling at different speeds. He noted that, in climates such as Iowa's, passing maneuvers on interstate highways can occur in conditions of rain, sleet, ice, and snow. These conditions create splash and spray and snow blowout that create visibility hazards. The longer the truck, testified Peters, the greater the visibility problem. (A. 505). CF concedes that the fraction of a second longer required to pass a vehicle can be a critical factor in the occurrence of an accident. (Factual Statement and Responses, #141 at 150).

Transportation Engineer Robert Carstens, a professor of engineering at Iowa State, directed a study uniquely designed to indicate mathematically with field data the effect of a change in length from 60 to 65-foot doubles. The study involved maneuvers that occur at intersections, and focused on right-angle collisions. The conclusion of Dr. Carstens was that the inescapable result of an increase in vehicle length is an expectation of an increase in intersectional accidents because of the type of maneuvers that such vehicles make in entering, crossing and diverging from a traffic stream. A 65-foot double encroaches more upon opposing traffic lanes than a 60-foot double because encroachment is directly related to length. This increased exposure contributes to more accidents. This expectation of an increase in accidents would occur at every intermediate stop for picking up trailers, chang-

ing of drivers, eating or refueling as well as every intermediate stop that would occur in vehicles going to and from the interstate system. (A. 457). As truck lengths approach 85 feet or 108 feet, this concern would increase accordingly.

Colonel Edward Dickinson, Chief of the Iowa Highway Patrol, expressed concern that longer vehicles have the potential to cause blockage at the scene of an accident because they may be difficult to back more than a few feet. (A. 399-400).

CF has stated: "As a general proposition, Appellee will concede that length may relate to safety, but the connection is not simple, and limiting length does not necessarily promote safety." Motion to Affirm at 15. Iowa has not suggested that the relationship is either simple or completely understood. Indeed, we have pointed out that the Federal Highway Administration is in the midst of a massive study known as Project No. 1-U, which is evaluating increasing truck sizes and weights in terms of, *inter alia*:

(a) accident experience,

(b) impact on traffic operations,

(c) handling properties of trucks,

(d) behavior and attitude of drivers in the vicinity of large trucks,

(e) aerodynamic properties, including "splash and spray" effect on other vehicles,

(f) brakes failing on downhill grades, and

(g) corrective research to satisfy safety problems.

A. 202-203.

Iowa contends neither that vehicle length is the most important determinant of vehicle safety nor that the nature and extent of the relationship is perfectly understood. Iowa *does* contend that its legislature is entitled

to place reasonable limits on vehicle length. CF has certainly not established by clear and convincing evidence that length is unrelated to safety.

As previously noted, the court below did not address this issue directly, apparently because they accepted the issue tendered by CF: whether 65-foot doubles are as safe as 55-foot semis. CF produced voluminous evidence on this point, their entire case in *Raymond* plus some additional studies and experts. Iowa vigorously disputed CF's claim that it was a demonstrable scientific fact that doubles are as safe as semis. Iowa challenged the foundation provided the expert witnesses and pointed out serious problems with the statistical studies. Reliability of the underlying data plagues all of the studies, including those offered by Iowa. (Transcript at 395). Sample size is frequently a problem. (A. 475-476). Several studies, including the Bureau of Motor Carrier Safety study showcased in *Raymond*, were shown to be seriously flawed because critical variables were not controlled. (A. 469). *None* of the studies offered by either side provide statistically significant conclusions on any ultimate issues arguably relevant to this litigation. The District Court so found. (JS at 21a). The District Court also found that doubles are more prone to jackknife and upset than semis. *Id.* Cf. *Raymond* at 436.

Thus, Iowa did and does dispute that doubles have been scientifically proven as safe as semis. We do concede that the *available* evidence does not indicate any gross differences in safety between doubles and semis. However, we vigorously deny that this proposition concerning *configuration* poses a threat to Iowa's 60-foot limitation on doubles, which excludes CF's preferred vehicles solely on the basis of *length*.[5]

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[5] Dr. John C. Glennon, CF's leading safety expert, testified that the various studies presented by CF revealed nothing about the comparative safety of 60-foot and 65-foot doubles. (A. 578).

Although we submit that the courts below misperceived the nature of the issue and applied an erroneous mode of analysis, we also submit that the District Court's call for federal preemption implies a finding that length is related to safety:

> The Court is not particularly comfortable with this result. The long established reluctance of the courts to interfere with State policy on the weight, width and length of vehicles permitted on its highways is being eroded. The public policy of the State of Iowa has been that it is for the best interest of its citizens to limit the length of twins to 60 feet. The public policy of the surrounding states for reasons known to them raised the limit to 65 feet. Apparently they made a policy decision that the advantages of permitting twins outweighed the disadvantages. Here, the Interstate Commerce Clause is being used to force Iowa to abandon its chosen public policy. The trucking industry has long played leap frog with weight and length limitations to achieve alternate increases. Truckers that haul products that "cube out" before they "weigh out" ask for an increase in length of a few feet so they can take advantage of the weight limit. Then those truckers that haul products that "weigh out" before they "cube out" ask for weight increases so they can utilize the additional length. It is not difficult to establish that the small increase in weight or length creates no additional safety hazard or damage to highways. With some officials saying 108-foot triple-bottoms impose no additional safety hazard on interstates, there appears to be no end in sight.
>
> If this concern points to anything of particular significance, it is that the interstates should be treated differently than other highways. Regulations regarding the length, width and weight of vehicles using the interstate system should be uniform. Congress should pre-empt this area of the law and set these standards.

JS at 27a-28a.

If the court had found no reason to fear 108-foot triple bottoms, it would not call for preemption; the court would not call for Congress to act upon an irrational premise.

The courts below erred because of a misreading of *Raymond*. Iowa has consistently contended that a concurring opinion in *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978), decided subsequently to *Raymond*, helped to illuminate the nature and proper resolution of the issues in this case:

> Appellees have not demonstrated that the Tanker Law's size limit is an irrational or ineffective means of promoting safety and environmental protection, . . . The stipulation quoted by the Court, ante, at 176 n. 27, 55 L.Ed.2d, at 200, merely establishes that there is good-faith dispute as to whether exclusion of large tankers will in fact reduce the risk of oil spillage in Puget Sound. A showing that there is conflicting evidence is not sufficient to undercut the presumption that a State's police power has been exercised in a rational manner. See, e.g., *Firemen* v. *Chicago, R.I. & P.R. Co.*, 393 U.S. 129, 138-193, 21 L.Ed.2d 289, 89 S.Ct. 323 (1968).

435 U.S. at 186-87.

Because CF has not demonstrated that the length of vehicles is unrelated to their safety, safety should be included among the local interests to be weighed against the alleged burden on interstate commerce.

II. IOWA'S 60-FOOT LIMITATION FOR DOUBLE TRAILERS IS NOT CONSTITUTIONALLY UNREASONABLE.

As previously noted, the central thrust of CF's trial presentation consisted of an examination of the comparative safety of 55-foot semis and 65-foot twins. Although we contend above that this evidence is essentially irrelevant to the broader question of whether § 321.457 may fairly be characterized as a safety statute, we do not dispute CF's entitlement to challenge the rationality of

the classifications employed in the statute. Properly stated, the issue is whether Iowa has been irrational in limiting twin-trailers to 60 feet in view of the 55-foot limitation for semis. Ordinarily this would be regarded as a Due Process or Equal Protection rather than a Commerce Clause inquiry, but the question should be addressed under one label or another.

The *general range* within which the limitations have been set cannot be regarded as unreasonable. Iowa's limitations for semis and doubles were adopted in 1963 and reflected the then-existing standards of the American Association of State Highway and Transportation Officials (AASHTO). AASHTO subsequently increased its standard for twin-trailers to 65 feet. A majority of states have now adopted that change; Iowa and at least 17 other states, to this point, have not (A. 645). As late as December 31, 1978, AASHTO data indicated 25 of 52 reporting jurisdictions limited doubles to less than 65 feet or refused to permit them at all (A. 645). Thus, Iowa can scarcely be said to be a constitutional "outrider" in its general approach to length limitation. Cf. *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1959) (striking new Illinois requirement of a type of mudguard incompatible with those required in other states).

Nor is it irrational for Iowa to permit CF to operate doubles only five feet longer than semis, rather than the additional ten feet they would prefer. This case is different from *Raymond, inter alia*, because of the different statutory treatment of doubles. Wisconsin disadvantaged doubles compared to semis, apparently because of their configuration, *Raymond* at 432-33; Iowa *advantages* doubles compared to semis, apparently because of their configuration. Sixty-five foot doubles are excluded from Iowa highways, not because of their configuration, but because they are too long. Put differently, CF cannot claim that Iowa discriminates against the type of vehicles which it prefers to operate. CF can only complain that

Iowa has a shorter limit for doubles than obtains in some other states.

Unlike in *Raymond*, the issue here becomes one of legislative line drawing. Virtually whenever a numerical line is drawn, whether it be in terms of time, distance, weight, speed, etc., the particular number chosen will be somewhat arbitrary in comparison with another closely adjacent number. Justice Holmes' statement is classic:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that is very wide of any reasonable mark.

Louisville Gas & Electric Co. v. *Coleman*, 277 U.S. 32, 41 (1938) (dissenting opinion). See also *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307, 314-16 (1976); *Mathews* v. *Diaz*, 426 U.S. 67, 82-84 (1976).

Iowa cannot produce statistical studies demonstrating conclusively that a 60-foot double is safer than a 65-foot double. CF's own expert acknowledges that five feet of length will not appear to be statistically significant, but states that ten feet likely is significant. (A. 71). Moreover, few dispute that Iowa is reasonable in declining to permit *85-foot* doubles. A suit seeking to require a twenty-five foot increase in length would seem doomed to failure; five suits, each involving the question of whether five feet in length makes a safety difference, cannot be permitted to achieve indirectly what one suit could not obtain directly.

III. THE CLAIMED BURDENS ON INTERSTATE COMMERCE ARE NEITHER SUBSTANTIAL NOR FAIRLY ATTRIBUTABLE TO IOWA'S LENGTH LIMITATIONS.

Before analyzing the burden issue, it may be helpful to note what is not involved in this case. There is no claim here that the flow of real goods is actually impeded; whatever the effect may be on carriers, the length limitation does not deny shippers access to them. There is no showing that the length limitation advantages intrastate over interstate carriers, nor any showing that it advantages interstate carriers based in Iowa over those based elsewhere. This Court "consistently has distinguished between outright protectionism and more indirect burdens on the free flow of trade." *Lewis* v. *BT Investment Managers, Inc.*, —— U.S. ——, filed June 9, 1980, 48 L.W. 4638, 4640. The burden here, if any, is extremely indirect and cannot be characterized as "economic protectionism."

Iowa submits that the only fair measure of any burden on interstate commerce here is any difference in efficiency between an optimally organized system employing 60-foot doubles and a system employing 65-foot doubles. That is the proper measure because that is the difference between what CF may do with the limitation in place and what they seek to accomplish by this litigation. Moreover, CF must establish a linkage between effects on operating costs and rates charged shippers. It is interstate commerce and not trucking industry profits which is constitutionally protected.

Iowa does not dispute that a truck which will carry more cubic feet of cargo is *potentially* more efficient on a cost-per-mile basis than a smaller vehicle. In this limited sense, a 65-foot double, which has approximately 10% greater cubic capacity, is potentially more efficient than a 60-foot double. In this limited sense, a 108-foot triple, operated by CF in some parts of the United States (A. 365-366), has a greater potential efficiency. Cubic

capacity could also be increased significantly by increasing the permissible width of trailers by twelve inches. The cubic capacity of a freight train, of course, dwarfs that of even the largest motor carrier. Obviously, increasing cubic capacity is not invariably and indefinitely efficient or otherwise socially desirable.

Whether the potential efficiency of increased cubic capacity is ever realized in actual operation may depend upon many variables,[6] one of which is whether the increased cubic capacity is fully utilized. This does not always occur in the trucking industry, as is illustrated by the evidence that CF will use small straight trucks in certain urban areas and a double tractor with a single trailer in other areas. (A. 353). Bigger is not more efficient for all purposes: a Boeing 747 aircraft is generally not used for short flights or even long flights to obscure destinations.

CF has operated a type of 60-foot double in Iowa, but has never operated an optimally organized system throughout the nation or the Midwest using the vehicles legal in Iowa. For that reason, they have no actual experience upon which to base a meaningful comparison. The record thus does not provide a precise and reliable estimate of the extent, if any, to which the potential inefficiency actually is translated into a net deficit.

There are several extrinsic reasons to believe any net deficit is not very great. Roadway, Inc., one of CF's major competitors, has determined not to use doubles at all, but competes effectively with CF nationally and in Iowa as a major carrier of general commodities. (A. 237; 377-378). CF also concedes that its Iowa business has expanded in recent years, Iowa's length limitation notwithstanding. (A. 366). And, CF is expanding its opera-

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[6] Other obvious variables include accident rates, maintenance costs, and fuel consumption.

tion in the southeastern states, in which it may operate neither 65-foot nor 60-foot doubles. (A. 372-374).

CF has deemphasized the only fair approach to assessing the claimed burden and rather has attempted to attribute to Iowa the estimated actual costs it has experienced as a result of its voluntary business decision to direct much of its traffic, semitrailer as well as 65-foot double, through Missouri rather than Iowa. The courts below accepted CF's claim that Iowa's length limitation "caused" this "diversion." That claim is as unfair as it is inaccurate.

Iowa has limited doubles to 60 feet since 1963, at which time the AASHTO standard was also 60 feet. CF may operate 60-foot doubles as well as semis in any state where it may legally operate 65-foot doubles. Had CF elected to acquire 60-foot doubles, *i.e.* to make that vehicle the "industry standard," it could direct its traffic over the routes of its choosing. Traditional legal concepts of attributing causation stress the significance of voluntary human conduct as a superceding cause. See H. Hart & A. Honoré, *Causation in the Law* at 129-34 (1959). That voluntary conduct here was CF's decision to employ large quantities of 65-foot doubles with full knowledge that they could not be operated in a significant number of states. Accepting CF's attribution of causation effectively permits the trucking industry and states on two sides to preempt a reasonable state policy. Heretofore only Congress has been conceded that authority:

> . . . the states may act within their respective jurisdictions until Congress sees fit to act . . . . As this principle maintains essential local authority to meet local needs, it follows that one state cannot establish standards which would derogate from the equal power of other states to make regulations of their own.

Sproles v. *Binford*, 286 U.S. 374, 390 (1932).

Justice Stone elaborated on this point in *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177, 195-96 (1938):

> It would hardly be contended that if all the states had adopted a single standard none, in the light of its own experience and in the exercise of its judgment upon all the complex elements which enter into the problem, could change it.

The flaw in CF's attribution may further be exposed by considering two hypotheticals. Suppose Iowa had never constructed any interstate highways, that it had declined the federal contribution, as it was legally free to do. That decision would as effectively "divert" CF's 65-foot twins as a length limitation. Would a federal court order Iowa to construct Interstate 80? Or suppose Missouri had declined to increase its length limitation to 65 feet as it was free to do, at least until the decisions of the courts below. Iowa would have behaved exactly as it has, but it could not then be suggested that Iowa caused a diversion through Missouri.

It is now clear that this case, contrary to the way *Raymond* was argued and decided, involves the fate of length limitations across the entire nation. The record reflects that most eastern and southeastern states do not permit 65-foot doubles to operate on their highways. (A. 605). Focussing on that fact lays bare one of the reasons the "burden" analysis of the courts below is unsound. Iowa is alone in permitting only 60-foot doubles in an area of the county where 65-foot doubles are generally permitted. CF's burden analysis depends upon that fact for the argument that Iowa "causes" CF to "divert" its equipment through other states. No such claim has been or could be made for the East and Southeast and CF is expanding into that area, with *semi-trailers*. These facts reveal that CF's burden argument based upon diversion is a bootstrap grounded in their voluntary business decisions and the recent legislative

decisions of other midwestern states. It cannot be the law that the Constitution requires Iowa, with its hazardous winters, to permit long trucks, while states with mild southeastern climates may limit truck length. A burden analysis which produces absurd results must be reexamined.

Unlike the situation in *Raymond*, then, it is not appropriate to attribute any shipping *delays* CF may experience to Iowa's length limitation. CF may take advantage of any claimed economies associated with the double configuration and may run doubles on the route of its choice. Wisconsin only permitted semis and it was thus not unfair in *Raymond* to attribute delays and diversions of doubles to their policy.

However, even if one were to accept, *arguendo*, CF's claim that the burden should be measured by the costs associated with diverting traffic through Missouri, we are dealing here with an essentially *de minimis* impact on the nation's shippers. Iowa's expert economist, Professor Thomas Pogue, placed these costs in useful perspective:

> I really wanted to address the question of the quantitative significance of the costs that CF says are associated with this limitation, pretty much taking their estimate of their costs as given, with a few reservations, and what I have tried to do is, I think, to show that in comparison to other costs, these are small. In comparison to other cost increases that CF confronts and other similar carriers confront each year, these costs are small.
>
> I have been concerned about the fact that the impact on costs associated with the ban, as estimated by CF, has not been translated into a quantitative estimate of the impact on rates, and I see this as a key linkage that needs to be spelled out; and in my own very uninstructive way I have tried to get some feel for what that magnitude might be in the absence of

> seeing any estimates in the testimony of CF, and that was my purpose in trying to work though the implications for average rates of passing on the full cost savings that CF would enjoy by its estimates to its customers, and that again was a small percentage, less than one-third of one per cent, so looked at either from the perspective of effects on costs, it is small, or the prospective or potential effect on rates, it appears to be small.

A. 547-548.

More specifically, Prof. Pogue testified that CF's claimed burden of $2 million is only .336 of one per cent of CF's Total Operating Costs of $546,000,000. (A. 543). He compared this with the average wage increase of 8.1% per year and the average fuel cost increase of 24% per year over the period from 1972-77. (A. 544-545). Prof. Pogue expressed the opinion that the demand for motor carrier service is sufficiently price inelastic that it was unlikely that any rate increase attributable to the length limitation would be noticed by shippers in deciding whether to utilize motor carrier services. (Transcript at 1993-94).

CF's own witness, Mr. Andrew Happer of the Middlewest Motor Freight Bureau, testified that he had made no attempt to calculate the effect of CF's claimed burden on shipping rates, but that the effect would not be of great magnitude. (A. 166). Indeed, Happer admitted that the $2 million was of approximately the same magnitude as the standard error involved in the random sampling procedure upon which the rate calculations are based. (A. 165).

Thus, even were it fair to attribute to Iowa's length limitation a burden in the amount calculated by CF, that burden would be insubstantial in light of this Court's most recent discussion of burden magnitudes. In concluding that a tug escort requirement did not burden interstate commerce, the majority in *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 179 (1979), stated:

> Nor does it appear from the record that the requirement impedes the free and efficient flow of interstate and foreign commerce, for the cost of tug escort for 120,000 DWT tanker is less than one cent per barrel of oil and the amount of oil processed at Puget Sound refineries has not declined as a result of the provision's enforcement. App. 68. Accordingly, we hold that § 88.16.190(2) of the Tanker Law is not invalid under the Commerce Clause.

Similarly, a concurring opinion adopted a *de minimis* approach in concluding that a size limitation on oil tankers did not burden interstate commerce:

> Exclusion of tankers larger than 125,000 DWT has not resulted in any reduction in the amount of oil processed at the Puget Sound refineries. App. 69. Moreover, according to the record, use of a 120,000 DWT tanker rather than a 150,000 DWT tanker increases the cost of shipping oil from Valdez, Alaska, to Cherry Point by a mere $.02 to $.04 per barrel, *id.*, at 64; and the record does not specify the relevant cost data for the Persian Gulf-Cherry Point route. Finally, appellees offered no concrete evidence of any significant disruption in their tanker operations, or of any decrease in the market value of the tankers that they own, as a result of the Tanker Law's provisions.

435 U.S. at 187, n.9.

Finally, we have CF's own statement that the burden is minimal. Because of Wisconsin's geographic location, CF argued in *Raymond* that their refusal to grant permits for doubles disrupted the entire interstate system. In 1977, however, Iowa was a different case:

> Iowa, *which permits 60-foot twin trailers*, enacted administrative regulations to permit 65-foot twin trailers throughout the state, These regulations were recently struck down as improperly promulgated. *Motor Club of Iowa* v. *Department of Transportation et al.*, 251 N.W.2d 510 (March 17, 1977). *Iowa's*

> *ban has never had the same deleterious effect that Wisconsin's ban has had. Iowa through traffic can easily be rerouted through Missouri. Wisconsin's traffic cannot because of distance.*

Brief for Appellants, at 26, n.9, *Raymond Motor Transportation, Inc. and Consolidated Freightways Corp.* v. *Rice et al.*, filed May 10, 1977. (Emphasis added.)

CF has failed to prove a substantial reduction in the passage of goods through the Midwest because of increased rates or delays fairly attributable to Iowa's length limitation.

IV. CF CANNOT ATTRIBUTE TO LENGTH LIMITATIONS A BURDEN ON NATIONAL INTERESTS THAT CLEARLY OUTWEIGHS IOWA'S INTEREST IN HIGHWAY SAFETY.

It has been demonstrated above that Iowa's length limitations are rationally related to safety. *Raymond* is distinguished in that vital respect. But Iowa recognizes that the Commerce Clause inquiry extends beyond the Due Process inquiry. See *Raymond*, 434 U.S. at 442-43; Dowling, *Interstate Commerce and State Power*, 27 Va. L.Rev. 1, 21-22 (1940). This Court will invalidate even a rational state regulation if it is demonstrated that national interests in preserving a free trade unit clearly outweigh local interests. *Raymond*, 434 U.S. at 443. In short, this Court will balance the interests. Prior decisions of this Court, however, provide a helpful structure and focus to the weighing of the particular factors involved in assessing Iowa's length limitations.

First, this Court has placed great weight on any colorable safety interest. Deference to state regulation has been greatest in the field of highway safety regulation. See, *e.g.*, *Morris* v. *Duby*, 274 U.S. 135, 143 (1927) (upholding maximum weight limitation); *Sproles* v. *Binford*, 286 U.S. 374, 390 (1932) (upholding comprehensive size and weight limitations); *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177, 187 (1938) (up-

holding width and weight limitations); *Maurer* v. *Hamilton*, 309 U.S. 598, 603 (1940) (upholding restriction on trailer protruding over tractor or driver); *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520, 524 (1959) (striking new Illinois requirement of a type of mudguard incompatible with those required in other states); *Raymond Motor Trans., Inc.* v. *Rice*, 434 U.S. 429, 443-44 (1978). This Court has never struck the balance against a local safety regulation unless convinced by evidence in the record that the safety concerns are illusory as a matter of law. Cf. *Bibb, supra; Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945).

Second, while this Court has indicated that substantial increases in costs may be relevant to assessing a claimed burden on interstate commerce, *Raymond*, 434 U.S. at 445, this Court has never, to Iowa's knowledge, stricken a regulation solely on the basis of increased costs to an interstate concern. See *Bibbs*, 359 U.S. at 525-26. Of course, any other approach would totally bar the states from regulations that impact upon interstate commerce because, if a safety regulation were cost-efficient from the business' internal standpoint, it would be adopted voluntarily. As one commentator puts it:

> If a safety device were cost-justified, businesses would adopt it without compulsion. For example, if running long trains caused accidents and railroads had to bear the costs of those accidents, then railroads would voluntarily run shorter trains, provided that the accident costs exceeded the cost of running shorter trains. Regulation by statute occurs either when the legislature rejects efficiency as a criterion or when it seeks to remedy problems arising in the process of internalizing the external costs of a business, such as difficulty in determining the costs of accidents caused by long trains.

Tushnet, *Rethinking the Dormant Commerce Clause*, 1979 Wis.L.Rev. 125, 143.

This Court long ago rejected the view that the dormant Commerce Clause impliedly prohibits all state regulation of interstate commerce. Dowling, *supra* at 4-5.

This Court also has often, although not invariably, framed the balancing inquiry in the terms of *Cooley* v. *The Board of Wardens*, 12 How. 299 (1851): whether the "subjects of this power" are "local" or "national." In *Barnwell*, Justice Stone expressly rejected a lower court finding that interstate carriage by motor trucks had become a national industry, 303 U.S. at 182, and held that "few subjects of state regulation are so peculiarly of local concern as is the use of state highways," *id.* at 187. He stressed that local highways are built, owned and maintained by the States. That is still true today.

CF has argued, and the lower courts apparently have agreed, that the *interstate highway system* is a matter of national rather than local concern. (JS at 8a, 26a). Obviously, in a geographic sense the interstate system is national in scope. And, there is no doubt that the interstate system is of vital importance to the economic well-being of the nation. But the national/local dichotomy is used in the Commerce Clause context as a term of art, referring to the need for national *uniformity*. Matters of acquisition and transfer of real property clearly affect the nation in the most vital way, yet this Court has regularly deferred to state law in this area. See, *e.g.*, *Wilson* v. *Omaha Indian Tribe*, 442 U.S. 653, (1979); *State Land Bd.* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378-79 (1977).

Moreover, CF's use of the longest vehicles permitted by law makes clear that they do not want "uniformity" in the customary sense of the term, *i.e.*, a national maximum length limit of, say, 65 feet. What CF seeks is a "minimum" maximum of 65 feet. That is not uniformity; that is judicially mandated laissez-faire. Only Congress can create true uniformity.

Congress has provided rather definite clues that it does not believe that there is a need for uniformity in regula-

tions of vehicle size.[7] First, the approach to highways since the Federal Aid Road Act was enacted in 1916, 39 Stat. 355, has been to provide federal financial assistance to the states. Although the assistance has been conditioned on a state's willingness to comply with various federal criteria, the primary responsibility for the construction, maintenance and regulation of our system of highways has rested upon state government. The Federal-Aid Highway Act of 1956 increased the federal percentage contribution and committed massive amounts of federal dollars to highway construction, but Congress did not manifest an intent to modify its "creative federalism" approach to highways. On the contrary, in 1973 Congress enacted what is now 23 U.S.C. § 145, 87 Stat. 261, which provides:

> The authorization of the appropriation of Federal funds or their availability for expenditure under

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[7] One theory of this Court's role under the dormant Commerce Clause is that of enforcing the implied will of Congress. *Southern Pacific Co., supra* at 768; Dowling, *supra* at 6, 17-18, 19-21. Insofar as Congress can be heard, this Court need not rely solely upon implication. In any event, it is clear that with Congressional consent a state may engage in regulation that would otherwise be characterized as an impermissible burden on interstate commerce:

> Congress, of course, has power to regulate the flow of interstate commerce in ways that the States, acting independently, may not. And Congress, if it chooses, may exercise this power indirectly by conferring upon the States an ability to restrict the flow of interstate commerce that they would not otherwise enjoy. See *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. at 542-543; *Prudential Insurance Co.* v. *Benjamin*, 328 U.S. 408, 423-434 (1946); *International Shoe Co.* v. *Washington*, 326 U.S. 310, 315 (1945).

Lewis v. *B.T. Investment Managers, Inc.*, —— U.S. ——, filed June 9, 1980, 48 U.S.L.W. 4638, 4643.

> this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. *The provisions of this chapter provide for a federally assisted State program.* (Emphasis added.)

Second, this Court, virtually since the advent of federal aid to highway programs, has indicated that regulation of vehicle sizes and weights is a "local concern" for purposes of the Commerce Clause. Although this Court has taken pains to point out that Congress could preempt state regulation, see, *e.g.*, *Morris* v. *Duby*, 274 U.S. 135, 143 (1927), Congress has so far declined to enact preemptive legislation. See, *e.g.*, S. Rep. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.[8]

If this were a case of first impression, little could be inferred from Congressional silence. But Congressional inaction in the face of decades of judicial deference to state highway regulation bespeaks approval. See *Gwin, White & Prince* v. *Henneford*, 305 U.S. 434, 441 (1939); Dowling, *supra* at 25, n.37.

Third, when Congress has expressed concern about the pattern of state size regulation, it has been a concern that the states are capitulating to the trucking industry's desire for ever larger vehicles. For example, Section 108(j) of the Federal Aid-Highway Act of 1956 withheld federal aid for the construction of interstate highways from states in which the maximum allowable weight or width was in excess of statutory limits or state limits in effect on July 1, 1956, whichever is the greater. 23 U.S.C. § 127, 70 Stat. 381.

Congress amended 23 U.S.C. § 127 in 1975, 88 Stat. 2283, to permit "moderate increases" in the allowable

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[8] A preemptive bill fixing truck lengths at 65 feet (S.1390) was passed by the United States Senate on February 20, 1980. 126 Cong. Rec. S1661 (Feb. 20, 1980). As of this writing, the House of Representatives had not acted on the measure.

weight maximums. S. Rep. No. 93-1111, 92d Cong., 2d Sess. (1974), at 10. Commenting upon its recommendation, the Senate Committee on Public Works stated that it "strongly believes that the ultimate decision on the weights of trucks is a matter for the States, and it wishes to stress that this legislation is not designed as a recommendation for State action." *Id.* "The Committee, in fact, rejected an Administration recommendation that the increases be mandatory on the States, for it is the States which have to determine for themselves—based on the needs of their own economies—the capacities of their road system to accommodate such changes and the costs that may result from the increases." *Id.* "Moreover, the Committee considered and rejected recommendations by the Administration and others to write into law for the first time a Federal guidelines on the lengths of trucks. *The Committee believes that truck lengths should remain, as they have been, a matter for State decision.*" *Id.* (Emphasis added.) Mentioned in connection with those decisions was "the question of safety," as "[h]eavier and larger trucks are said to overstress bridges, cause buffeting of smaller vehicles, and impose a psychological impact on other drivers." *Id.* In addition, Congress adopted a provision in 1975 requiring each state to certify to the Secretary of Transportation that it is enforcing all laws respecting maximum vehicle *size* and weights. 23 U.S.C. § 141, 88 Stat. 2284.

The appropriate roles of this Court and Congress may be considered from a slightly different perspective. One commentator suggests adopting the following theory of judicial review in Commerce Clause cases:

> The Court should ask, first, whether in its judgment this is an area where uniformity is desirable, and second, whether, if it errs, the appropriate interests will be able to mobilize Congress to act.

Tushnet, *supra* at 153.

In this instance, the interests who oppose longer trucks appear likely to be diffuse and ineffective, with the possible exception of the railroads. The trucking industry, on the other hand, as Tushnet argues at 162-63, is well placed to present a case, if case there be, for requiring the states to permit longer trucks.[9] On the other hand, because a majority of states have acquiesced in industry demands for longer trucks, one would expect that it would be difficult to interest many members of Congress in legislation permitting states to again set length limits lower than prevail in their own states.

This Court has only rarely invalidated nondiscriminatory state laws on the theory that they indirectly create a burden on interstate commerce. There may be a number of reasons for this, but among them are 1) that in dormant Commerce Clause cases, unlike, say, First Amendment cases, this Court is the first rather than the last line of constitutional defense, and 2) Congress has a far wider ranger of options than this Court with which to confront complex social and economic problems. Here, CF invites this Court to weigh two incommensurables, safety and efficiency, and offers this Court a choice only between continuing the tradition of state regulation and a novel laissez-faire regimen. Congress, if convinced

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[9] As the industry itself states:

> In the lexicon of Washington journalists, the word 'powerful' is the standard descriptive adjective whenever the trucking industry lobby is mentioned. For all its repetition, the phrase is not a cliche. With at least one trucking company operating in every congressional district in the country, and with a national organization coordinating policy, the trucking industry is a force to be reckoned with on Capitol Hill. And the industry's eyes and ears, its front line in the legislative arena, is the ATA Government Relations Division.

American Trucking Associations, Inc., *1979 Annual Report*, at 16.

there were a problem with the status quo, could consider additional options such as true uniformity (a maximum limit rather than a minimum limit) or different limits for different classes of highways and vehicles. In addition, Congress could consider pragmatically that length increases are followed by demands for weight increases. Congress could balance the claimed efficiencies of ever larger vehicles with the increased need for highway maintenance revenues. Congress could balance the claimed short-term gains in efficiency from larger trucks against the potential impact on the optimum mix with other modes of transportation. Congress could more easily change its mind with rapid developments in energy supply and transportation technology.

This Court has never attempted to balance safety and efficiency. A statement in *Firemen* accurately conveys this Court's practice:

> Nor was it open to the District Court to place a value on the additional safety in terms of dollars and cents, in order to see whether this value, as calculated by the court, exceeded the financial cost to the railroads.

Firemen, 393 U.S. at 139.

CF offers no good reasons for departing from that tradition.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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APPENDIX

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Iowa Code (1979), Section 321.457:

321.457 *Maximum length.* The maximum length of any motor vehicle or combination of vehicles, except fire fighting apparatus and vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot be dismembered readily when required for emergency repair of public service facilities or properties, and such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to mark clearly the dimensions of such load, at which time, a member of the state highway patrol shall be notified prior to the operation of such vehicle, shall be as follows:

1. No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

2. No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

3. Except as to combinations of vehicles, provisions for which are otherwise made in this chapter, no combination of truck tractor and a semitrailer hauling livestock shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet, nor shall any other combination of vehicles coupled together, unladen or with load, have an overall length, inclusive of front and rear bumpers in excess of fifty-five feet. Combinations of vehicles

consisting of a motor vehicle upon which a van box is fastened and which draws and bears a portion of the weight of a semitrailer purchased by an Iowa resident prior to April 16, 1974, may be operated on the highways of this state with a length exceeding fifty-five feet but not exceeding sixty feet, if a special overlength permit is obtained from the department for such operation. This special overlength permit shall be issued for the vehicle and such permit shall be valid until such time as the vehicle is no longer operable or until the owner of the vehicle transfers title to the vehicle to a nonresident. All such vehicles purchased after April 16, 1974, shall not be allowed to operate on the highways of this state.

4. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided, however, that the mobile home and its towing unit shall not be in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or 'pickup' shall not be construed to be a motor truck. Further providing that a portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that such vehicle or combination of vehicles drawing such loading chute is not in excess of the legal length provided for such vehicles or combinations.

5. No combination of vehicles coupled together which are used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, travel trailers, boats, farm and industrial tractors and self-propelled farm implements, nonself-propelled implements of hus-

bandry, and self-propelled vehicles shall have an unladen length, inclusive of front and rear bumpers in excess of sixty feet, but the passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, or boats being transported may extend up to three feet beyond the front and rear bumpers of the transporting vehicles when the overall length of the vehicle with load does not exceed sixty-five feet.

6. No combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet.

7. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state on July 1, 1974. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 code of federal regulations, paragraphs 1048.10, 1048.38, and 1048.101 as they exist on July 1, 1974.